

AMENDED IN SENATE APRIL 18, 2013

SENATE BILL

No. 531

Introduced by Senator Knight
(Coauthors: Senators Anderson, Berryhill, Emmerson, Fuller,
Gaines, Huff, Nielsen, Walters, and Wyland)
(Coauthor: Assembly Member Wilk)

February 21, 2013

An act to amend Sections 44936, 44938, ~~44939~~, 44944, and 44945 of, ~~and to add Sections Section 44932.5 and 44940.7 to, and to repeal Section 45047 of,~~ the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 531, as amended, Knight. School employees: discipline: suspension and dismissal.

(1) Existing law prohibits a permanent school employee from being dismissed except for one or more specified causes.

This bill would prohibit a collective bargaining agreement entered into or renewed on or after January 1, 2014, from requiring the removal, after a specified time period, from an employee's record of records pertaining to discipline, complaints, reprimands, or investigations relating to the employee's commission, or potential commission, of one of those specified causes for dismissal.

(2) Existing law authorizes a governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend him or her for specified causes at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing. Existing law prohibits that notice from being given between May 15th and September 15th in any year.

This bill would remove that prohibition.

(3) Existing law prohibits the governing board of a school district from acting upon any charges of unprofessional conduct, or unsatisfactory performance, unless at least 45, or 90, calendar days, respectively, prior to the date of the filing of the charges the governing board, or its authorized representative, has given the employee written notice, as specified.

This bill would remove those 45-day and 90-day requirements of written notice to the charged employee.

~~(4) Existing law requires the governing board of a school district to immediately place an employee on compulsory leave of absence if the employee is charged with a mandatory leave of absence offense, as defined.~~

~~This bill would require the governing board to transfer a certificated employee to nonclassroom duties that do not involve contact with pupils if the governing board has reasonable cause to believe that the employee is under investigation by a law enforcement agency for commission of a mandatory leave of absence offense. The bill would require an employee transferred under these provisions to continue to receive his or her regular salary during the period of the transfer. If the governing board returns the employee to classroom duties, the bill would require the governing board to record the reason or reasons for the return in a resolution adopted by the governing board. By placing additional duties on school district governing boards regarding the transfer of employee duties, this bill would impose a state-mandated local program.~~

~~(5)~~

(4) Existing law establishes a Commission on Professional Competence for each dismissal or suspension hearing requested by an employee, consisting of specified members, *and requires the proceeding to be conducted in accordance with the Administrative Procedure Act*. Existing law deems the decision of the Commission on Professional Competence to be the final decision of the governing board of the school district.

~~This bill would make various changes to the provisions relating to the hearing, including requiring delete the provisions providing for the establishment of a Commission on Professional Competence to consist solely of, and would instead require the proceedings to be conducted pursuant to the Administrative Procedure Act by an administrative law judge, as well as providing. The bill would provide that the decision of the commission administrative law judge would be advisory, and the final decision regarding the discipline of the employee would be~~

determined by action of the governing board of the school district. The bill would provide that an employee requesting a hearing may be placed on administrative leave without pay, and that an employee who is placed on administrative leave would be required to be paid his or her regular salary if he or she furnishes to the school district acceptable security, as specified. By increasing the duties of a governing board in this regard, this bill would impose a state-mandated local program.

(6)

(5) Existing law prohibits testimony from being given or evidence being introduced at the hearing relating to matters that occurred more than 4 years prior to the date of the filing of the notice of dismissal or suspension.

This bill would remove that 4-year limitation.

(7)

(6) This bill would make additional changes that are nonsubstantive and conforming.

(8)

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 44932.5 is added to the Education Code,
- 2 to read:
- 3 44932.5. A collective bargaining agreement entered into or
- 4 renewed on or after January 1, 2014, shall not require the removal,
- 5 after a specified time period, from an employee’s record of records
- 6 pertaining to discipline, complaints, reprimands, or investigations
- 7 relating to the employee’s commission, or potential commission,
- 8 of a cause listed in Section 44932.
- 9 SEC. 2. Section 44936 of the Education Code is amended to
- 10 read:

1 44936. The notice of dismissal or suspension in a proceeding
2 initiated pursuant to Section 44934 shall be in writing and be served
3 upon the employee personally or by United States registered mail
4 addressed to the employee's last known address. A copy of the
5 charges filed, containing the information required by Section 11503
6 of the Government Code, together with a copy of the provisions
7 of this article, shall be attached to the notice.

8 SEC. 3. Section 44938 of the Education Code is amended to
9 read:

10 44938. (a) The governing board of any school district shall
11 not act upon any charges of unprofessional conduct unless the
12 governing board or its authorized representative has given the
13 employee against whom the charge is filed written notice of the
14 unprofessional conduct, specifying the nature of the unprofessional
15 conduct with specific instances of behavior and with particularity
16 as to furnish the employee an opportunity to correct his or her
17 faults and overcome the grounds for the charge. The written notice
18 shall include the evaluation made pursuant to Article 11
19 (commencing with Section 44660) of Chapter 3, if applicable to
20 the employee.

21 (b) The governing board of any school district shall not act upon
22 any charges of unsatisfactory performance unless it acts in
23 accordance with the provisions of paragraph (1) or (2):

24 (1) The governing board or its authorized representative has
25 given the employee against whom the charge is filed written notice
26 of the unsatisfactory performance, specifying the nature of the
27 unsatisfactory performance with specific instances of behavior
28 and with such particularity as to furnish the employee an
29 opportunity to correct his or her faults and overcome the grounds
30 for the charge. The written notice shall include the evaluation made
31 pursuant to Article 11 (commencing with Section 44660) of
32 Chapter 3, if applicable to the employee.

33 (2) The governing board may act during the time period
34 composed of the last one-fourth of the schooldays it has scheduled
35 for purposes of computing apportionments in any fiscal year if,
36 before the beginning of that time period, the governing board or
37 its authorized representative has given the employee against whom
38 the charge is filed written notice of the unsatisfactory performance,
39 specifying the nature of the unsatisfactory performance with
40 specific instances of behavior and with such particularity as to

1 furnish the employee an opportunity to correct his or her faults
2 and overcome the grounds for the charge. The written notice shall
3 include the evaluation made pursuant to Article 11 (commencing
4 with Section 44660) of Chapter 3, if applicable to the employee.

5 (c) (1) “Unprofessional conduct” as used in this section means,
6 and refers to, the unprofessional conduct particularly specified as
7 a cause for dismissal or suspension in Sections 44932 and 44933
8 and does not include any other cause for dismissal specified in
9 Section 44932.

10 (2) “Unsatisfactory performance” as used in this section means,
11 and refers only to, the unsatisfactory performance particularly
12 specified as a cause for dismissal in Section 44932 and does not
13 include any other cause for dismissal specified in Section 44932.

14 ~~SEC. 4. Section 44940.7 is added to the Education Code, to~~
15 ~~read:~~

16 ~~44940.7. (a) The governing board shall transfer a certificated~~
17 ~~employee to nonclassroom duties that do not involve contact with~~
18 ~~pupils if the governing board has reasonable cause to believe that~~
19 ~~the employee is under investigation by a law enforcement agency~~
20 ~~for commission of a mandatory leave of absence offense within~~
21 ~~the meaning of subdivision (a) of Section 44940.~~

22 ~~(b) An employee transferred pursuant to this section shall~~
23 ~~continue to receive his or her regular salary during the period of~~
24 ~~the transfer.~~

25 ~~(c) If the governing board returns the certificated employee to~~
26 ~~classroom duties that involve contact with pupils, the governing~~
27 ~~board shall record the reason or reasons for the return in a~~
28 ~~resolution adopted by the governing board.~~

29 ~~SEC. 4. Section 44939 of the Education Code is amended to~~
30 ~~read:~~

31 ~~44939. (a) Upon the filing of written charges, duly signed and~~
32 ~~verified by the person filing them with the governing board of a~~
33 ~~school district, or upon a written statement of charges formulated~~
34 ~~by the governing board, charging a permanent employee of the~~
35 ~~district with immoral conduct, conviction of a felony or of any~~
36 ~~crime involving moral turpitude, with incompetency due to mental~~
37 ~~disability, with willful refusal to perform regular assignments~~
38 ~~without reasonable cause, as prescribed by reasonable rules and~~
39 ~~regulations of the employing school district, with violation of~~
40 ~~Section 51530, with knowing membership by the employee in the~~

1 Communist Party or with violation of any provision in Sections
 2 7001 to 7007, inclusive, the governing board may, if it deems such
 3 action necessary, immediately suspend the employee from his *or*
 4 *her* duties and give notice to ~~him~~ *the employee* of his *or her*
 5 suspension, and that 30 days after service of the notice, he *or she*
 6 will be dismissed, unless he *or she* demands a hearing.

7 If

8 (b) If the permanent employee is suspended upon charges of
 9 knowing membership by the employee in the Communist Party or
 10 for any violation of Section 7001, 7002, 7003, 7006, 7007, or
 11 51530, he *or she* may, within 10 days after service ~~upon him~~ of
 12 notice of ~~such~~ suspension, file with the governing board a verified
 13 denial, in writing, of the charges. ~~In such event the~~ A permanent
 14 employee who demands a hearing within the 30-day period shall
 15 continue to be paid his *or her* regular salary during the period of
 16 suspension and until the ~~entry of the final~~ decision of the
 17 ~~Commission on Professional Competence governing board of the~~
 18 *school district*, if and during such time as ~~he~~ *the employee* furnishes
 19 to the school district a suitable bond, or other security acceptable
 20 to the governing board, as a guarantee that the employee will repay
 21 to the school district the amount of salary ~~so paid to him~~ during
 22 the period of suspension in case the decision of the ~~Commission~~
 23 ~~on Professional Competence governing board~~ is that ~~he~~ *the*
 24 *employee* shall be dismissed. If it is determined that the employee
 25 may not be dismissed, the school board shall reimburse the
 26 employee for the cost of the bond.

27 SEC. 5. Section 44944 of the Education Code is amended to
 28 read:

29 44944. (a) (1) In a dismissal or suspension proceeding initiated
 30 pursuant to Section 44934, if a hearing is requested by the
 31 employee, the hearing shall be commenced within 60 days from
 32 the date of the employee's demand for a hearing. The hearing shall
 33 be initiated, conducted, and a decision made in accordance with
 34 Chapter 5 (commencing with Section 11500) of Part 1 of Division
 35 3 of Title 2 of the Government Code. However, the hearing date
 36 shall be established after consultation with the employee and the
 37 governing board, or their representatives, and the ~~Commission on~~
 38 ~~Professional Competence governing board~~ shall have all of the
 39 power granted to an agency in that chapter, except that the right
 40 of discovery of the parties shall not be limited to those matters set

1 forth in Section 11507.6 of the Government Code but shall include
2 the rights and duties of any party in a civil action brought in a
3 superior court under Title 4 (commencing with Section 2016.010)
4 of Part 4 of the Code of Civil Procedure. Notwithstanding any
5 provision to the contrary, and except for the taking of oral
6 depositions, no discovery shall occur later than 30 calendar days
7 after the employee is served with a copy of the accusation pursuant
8 to Section 11505 of the Government Code. In all cases, discovery
9 shall be completed prior to seven calendar days before the date
10 upon which the hearing commences. If any continuance is granted
11 pursuant to Section 11524 of the Government Code, the time
12 limitation for commencement of the hearing as provided in this
13 subdivision shall be extended for a period of time equal to the
14 continuance. However, the extension shall not include that period
15 of time attributable to an unlawful refusal by either party to allow
16 the discovery provided for in this section.

17 (2) If the right of discovery granted under paragraph (1) is
18 denied by either the employee or the governing board, all of the
19 remedies in Chapter 7 (commencing with Section 2023.010) of
20 Title 4 of Part 4 of the Code of Civil Procedure shall be available
21 to the party seeking discovery, and the court of proper jurisdiction
22 to entertain his or her motion shall be the superior court of the
23 county in which the hearing will be held.

24 (3) The time periods in this section and of Chapter 5
25 (commencing with Section 11500) of Part 1 of Division 3 of Title
26 2 of the Government Code and of Title 4 (commencing with
27 Section 2016.010) of Part 4 of the Code of Civil Procedure shall
28 not be applied so as to deny discovery in a hearing conducted
29 pursuant to this section.

30 (4) The superior court of the county in which the hearing will
31 be held may, upon motion of the party seeking discovery, suspend
32 the hearing so as to comply with the requirement of paragraph (3).

33 (5) A witness shall not be permitted to testify at the hearing
34 except upon oath or affirmation.

35 (b) The hearing provided for in this section shall be conducted
36 ~~by a Commission on Professional Competence, which shall consist~~
37 ~~solely~~ of an administrative law judge of the Office of
38 Administrative Hearings who shall be responsible for ensuring
39 that the legal rights of the parties are protected at the hearing.

1 (c) (1) The ~~Commission on Professional Competence~~
2 *administrative law judge* shall prepare a written decision containing
3 findings of fact, determinations of issues, and a disposition that
4 shall be, solely, one of the following:

5 (A) That the employee should be dismissed.

6 (B) That the employee should be suspended for a specific period
7 of time without pay.

8 (C) That the employee should not be dismissed or suspended.

9 (2) The decision of the ~~commission~~ *administrative law judge*
10 that the employee should not be dismissed or suspended shall not
11 be based on nonsubstantive procedural errors committed by the
12 school district or governing board unless the errors are prejudicial
13 errors.

14 (3) The ~~commission~~ *administrative law judge* shall not have the
15 power to dispose of the charge of dismissal by imposing probation
16 or other alternative sanctions. The imposition of suspension
17 pursuant to subparagraph (B) of paragraph (1) shall be available
18 only in a suspension proceeding authorized pursuant to subdivision
19 (b) of Section 44932 or Section 44933.

20 (4) The decision of the ~~commission~~ *administrative law judge*
21 shall be advisory, and the final decision regarding the discipline
22 of the employee shall be determined by action of the governing
23 board of the school district.

24 (5) The governing board may adopt from time to time rules and
25 procedures not inconsistent with this section as may be necessary
26 to effectuate this section.

27 (6) The governing board and the employee shall have the right
28 to be represented by counsel.

29 (d) (1) If the governing board determines that the employee
30 should be dismissed or suspended, the governing board and the
31 employee shall share equally the expenses of the hearing, including
32 the cost of the administrative law judge. The Controller shall pay
33 all claims submitted pursuant to this paragraph from the General
34 Fund, and may prescribe reasonable rules, regulations, and forms
35 for the submission of the claims. The employee and the governing
36 board shall pay their own attorney's fees.

37 (2) If the governing board determines that the employee should
38 not be dismissed or suspended, the governing board shall pay the
39 expenses of the hearing, including the cost of the administrative
40 law judge.

1 (3) If the employee petitions a court of competent jurisdiction
2 for review of the decision of the governing board, the payment of
3 expenses for the administrative law judge required by this
4 subdivision shall not be stayed.

5 (4) If the decision of the governing board is finally reversed or
6 vacated by a court of competent jurisdiction, the employee, having
7 paid a portion of the expenses of the hearing, including the cost
8 of the administrative law judge, shall be entitled to reimbursement
9 from the governing board for the expenses.

10 (e) The hearing provided for in this section shall be conducted
11 in a place selected by agreement. In the absence of agreement, the
12 place shall be selected by the administrative law judge.

13 (f) (1) For the duration of the hearing conducted pursuant to
14 this section, the employee may be placed on administrative leave
15 without pay.

16 (2) If an employee is placed on administrative leave pursuant
17 to this section, the employee shall continue to be paid his or her
18 regular salary during the period of his or her administrative leave
19 of absence if during that time he or she furnishes to the school
20 district a suitable bond or other security acceptable to the governing
21 board, as a guarantee that the school district will be repaid the
22 amount of salary during the employee's leave of absence if, by
23 action of the governing board, a final decision is made to terminate
24 the employee, or the employee fails or refuses to return to service
25 following a decision not to terminate the employee. If the
26 governing board determines that the employee should not be
27 dismissed, the governing board shall reimburse the employee for
28 the cost of the bond upon his or her return to service in the school
29 district.

30 (3) If the employee prevails at the hearing, the administrative
31 law judge may recommend a suitable compensatory remedy,
32 including back wages and benefits, which the governing board
33 may adopt if the employee is reinstated. An employee who is
34 reinstated pursuant to this section, either by the governing board
35 or by order of a court of competent jurisdiction, is entitled to
36 reasonable back wages and benefits.

37 SEC. 6. Section 44945 of the Education Code is amended to
38 read:

39 44945. The decision of the governing board may, on petition
40 of the employee, be reviewed by a court of competent jurisdiction

1 in the same manner as a decision made by a hearing officer under
2 Chapter 5 (commencing with Section 11500) of Part 1 of Division
3 3 of Title 2 of the Government Code. The court, on review, shall
4 exercise its independent judgment on the evidence. The proceeding
5 shall be set for hearing at the earliest possible date and shall take
6 precedence over all other cases, except older matters of the same
7 character and matters to which special precedence is given by law.

8 *SEC. 7. Section 45047 of the Education Code is repealed.*

9 ~~45047. Service on a commission on professional competence
10 pursuant to Section 44944, in the employing school district or in
11 some other district, by a person employed by a district in a position
12 requiring certification qualifications shall not be considered time
13 off job with respect to Section 45041. Neither the amount paid to
14 a substitute required to be hired to replace such a person serving
15 on a commission on professional competence pursuant to Section
16 44945 in the employing school district or in some other district
17 nor the amount which would have been paid to a substitute had a
18 substitute been employed, shall be deducted from the person's
19 salary pursuant to Section 45042.~~

20 ~~SEC. 7:~~

21 *SEC. 8.* If the Commission on State Mandates determines that
22 this act contains costs mandated by the state, reimbursement to
23 local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.